

1  
2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA

4 Christopher K. Beckstrom,

5 Plaintiff

6 v.

7 GEICO General Insurance Company  
8 and GEICO,

9 Defendants

Case No. 2:24-cv-00480-CDS-BNW

Order Granting Plaintiff's Motion to  
Remand and Motion to File Surreply,  
Granting Defendants' Motion to File  
Surreply and Denying as Moot Motions to  
Dismiss and Amend

[ECF Nos. 6, 8, 12, 24, 26]

10 Before the court are four motions: a motion to dismiss filed by defendants GEICO  
11 General Insurance Company and GEICO (ECF No. 6), a motion to amend the complaint (ECF  
12 No. 8) and a motion to remand the case (ECF No. 12) filed by plaintiff Christopher Beckstrom, a  
13 motion for leave to supplement their response to plaintiff's motion to remand filed by  
14 defendants (ECF No. 24), and a "request" for leave to supplement his reply to plaintiff's motion  
15 to remand filed by Beckstrom (ECF No. 26). Because this case was removed exclusively on the  
16 grounds of diversity jurisdiction, and because defendants have not demonstrated that the  
17 amount in controversy exceeds \$75,000, I grant plaintiff's motion to remand and deny as moot  
18 defendants' motion to dismiss.

19 **I. Background<sup>1</sup>**

20 Beckstrom, an attorney, suffered injuries following a 2019 automobile accident. Compl.,  
21 ECF No. 1-2 at 3. He and his wife were in the car when they were hit by another vehicle driven  
22 by non-party Julie Marie Rau. *Id.* Beckstrom sought payment from Rau's insurer for medical  
23 expenses and other damages. *Id.* at 4. They ultimately settled for \$100,000 on August 2, 2021. *Id.*  
24 Beckstrom then sought additional payment from GEICO General, his insurer. *Id.* On August 3,  
25 2021, the day after settlement with Rau's insurer, Beckstrom claims he sent notice to GEICO,

26 \_\_\_\_\_  
<sup>1</sup> The court's citations to the complaint are to provide background information and do not serve as a  
findings of fact.

1 informing them of the settlement and that he “received two radiofrequency ablations (also  
2 known as RFAs) with another pending that week and that his physician informed him that he  
3 could expect to have repeat RFAs every 6 – 18 months.” *Id.* On September 27, 2021, Beckstrom  
4 claims that he sent a second notice to GEICO informing it that he received two additional RFAs,  
5 that he would be sending his bills and records, that he was providing GEICO “authorization to  
6 obtain the same bills and records, and requesting underinsured motor vehicles (“UIM”)  
7 benefits.” *Id.* Beckstrom alleges that on October 20, 2022, GEICO responded, having “evaluated  
8 Plaintiff’s claim at \$105,094 (\$64,094.17 in Plaintiff’s medical bills and an additional \$40,000.00  
9 for general compensation).” *Id.* at 4–5. Because Beckstrom had already received \$100,000 from  
10 Rau’s insurance carrier, he was offered \$5,094.17 to resolve his claim. *Id.* at 6. Beckstrom does not  
11 allege that he responded to this communication.

12 Beckstrom states that he next reached out to GEICO on August 22, 2023, sending “a  
13 communication which stated that he had just received his fifth RFA and that he wanted his  
14 claim to be concluded.” *Id.* at 5. He alleges that he did not receive a response from GEICO until  
15 October 27, 2023. *Id.* “[A]fter an exchange with Plaintiff, GEICO agreed to pay Plaintiff his  
16 \$50,000 UIM policy limit.” *Id.* Beckstrom contends that because he had not heard back from  
17 GEICO by September 25, 2023, he hired an attorney. *Id.* He claims that, because of GEICO’s  
18 delay in responding, he owes the attorney \$10,000 from his \$50,000 GEICO policy payment. Pl.’s  
19 first suppl. to initial disclosures, ECF No. 26 at 13.

20 Beckstrom filed suit in Nevada state court claiming that GEICO and GEICO General  
21 breached the covenant of good faith and fair dealing, violated Nevada’s unfair claims practices  
22 act (NRS 686A.310), and violated Nevada’s civil racketeering influenced and corrupt  
23 organizations act (RICO). ECF No. 1-2 at 6–24. Beckstrom declared that the prayer for relief  
24 exceeded \$50,000 in damages, specifically including:

- 25 1. Compensatory damages which include loss of UIM contract benefit, stress,  
26 fear, humiliation, attorney’s fees, out-of-pocket expenses, and distress in an  
amount which exceeds \$15,000.00,

1           2. Punitive damages to be determined at trial, but which exceeds \$15,000.00,

2           3. Reasonable attorneys' fees and costs, and

3           4. And other relief as to the Court seems just and proper.

4 *Id.* at 1, 24.

5           Defendants removed the action based on diversity jurisdiction, contending that  
6 Beckstrom and defendants are citizens of different states and that Beckstrom seeks damages  
7 over \$75,000. ECF No. 1 at 2–5. They assert that Beckstrom seeks to recover (1) the out-of-  
8 pocket expense cost that Beckstrom estimated prior to trial at \$270,000 and includes his five  
9 RFAs (totaling an estimated \$30,750) as well as for the future RFAs he will be required to  
10 receive; (2) “a multiple of the [] policy limits,” which would equate to a “multiple of” \$50,000;  
11 (3) attorney fees that reasonably estimated would exceed \$50,000; and (4) punitive damages  
12 that would reasonably exceed \$50,000. *Id.* at 3–4. Defendants argue that this total exceeds the  
13 \$75,000 amount-in-controversy requirement and thus this court has subject matter jurisdiction  
14 over the claims.

15           Beckstrom filed a motion to remand arguing that GEICO failed to meet its burden to  
16 show that the amount-in-controversy exceeds \$75,000. ECF No. 12. Specifically, he argues that  
17 future medical costs were not pled and would not be pursued, the “multiple of the [] policy  
18 limits” quote is misrepresented, GEICO has failed to show any evidence that attorney's fees  
19 would reach close to the jurisdictional threshold, and, because GEICO had already paid out the  
20 \$50,000, the potential punitive damages—as well as damages generally—would not arise to  
21 such a level as to reach the threshold. *Id.* at 3–7. Defendants responded that even Beckstrom's  
22 RICO claim alone, alleging “a vast conspiracy coordinated by Warren Buffet and implemented  
23 through a software called, ‘Claim IQ,’” would exceed \$75,000 given the penalty of treble  
24 damages, as would Beckstrom's attorney's involvement in this case—including responding to  
25  
26

1 defendants' motion to dismiss<sup>2</sup>—would arise to over \$50,000. ECF No. 14 at 5–8. They also  
 2 argue that Beckstrom has alleged that his future medical costs exceed \$270,600, which greatly  
 3 exceeds the jurisdictional threshold. *Id.* at 3. In his reply, Beckstrom argues that he does not seek  
 4 any future medical costs from defendants. ECF No. 18 at 2–3. He also asserts that the cost of the  
 5 attorney because of defendants' response delay was \$10,000. *Id.* at 3–4.

6 Defendants then filed a motion for leave to supplement their response in what I will  
 7 construe as a motion to submit a surreply.<sup>3</sup> ECF No. 24. They argue that, despite what  
 8 Beckstrom argued in his motion to remand and his reply, “his initial disclosures . . . detail  
 9 \$61,398.51 in medical damages, plus an undisclosed amount in ‘pain and suffering, economic  
 10 losses, mental anguish, emotional distress, loss of enjoyment of life, and punitive damages’ ‘[t]o  
 11 be determined at trial.’” ECF No. 24 at 1. In support of their argument, they attach Beckstrom's  
 12 initial disclosures. *Id.* at 5.

13 Beckstrom filed a “request for leave to supplement his reply,” which the court will  
 14 construe as a motion to file an additional surreply from the plaintiff. ECF No. 26. Although I  
 15 grant Beckstrom's motion to file an additional surreply because it is helpful to the resolution of  
 16 the pending motions before the court, he is reminded that in the future, surreplies that are not  
 17 filed by motion will not be considered. *See* LR 7-2(b) (“Surreplies are not permitted without  
 18 leave of court; motions for leave to file a surreply are discouraged.”). In this request, Beckstrom  
 19 attaches correspondence from opposing counsel following a June 7, 2024, meet-and-confer, as  
 20  
 21

---

22 <sup>2</sup> Defendants also filed a motion to dismiss. ECF No. 6. Beckstrom responded (ECF No. 8) and defendants  
 23 replied (ECF No. 11). Beckstrom's response included a countermotion to amend his complaint. ECF No.  
 24 8; *see* Proposed am. compl., ECF No. 8-1.

25 <sup>3</sup> Local Rule 7–3(b) allows for motion, a response, and a reply. No provision exists for filing a surreply.  
 26 Thus, a party must obtain leave from the Court before filing a surreply. Although counsel appropriately  
 sought leave of court to file this document, it is in fact a surreply, not a supplement. “A sur-reply may  
 only be filed to address new matters raised in a reply to which a party would otherwise be unable to  
 respond.” *Kanvick v. City of Reno*, 2008 WL 873085, at \*1 n.1 (D. Nev. Mar. 27, 2008). Because the court  
 finds the information in the surreply relevant to resolution of this matter, the motion to file a surreply is  
 granted.

1 well as his June 10, 2024 supplement to his amended initial disclosures, which were filed June 5,  
2 2024. ECF No. 26 at 1. The email from opposing counsel stated:

3 I explained to you the importance of a complete and full disclosure of plaintiff's  
4 damages pursuant to Rule 26, given that plaintiff's motion to remand is pending  
5 before the Court and because we will rely on any representations and omissions  
6 from plaintiff's damages computation. I informed you that this was particularly  
7 important, as a result, and should something be left off that should have been  
8 included, we would pursue all available avenues to seek to foreclose plaintiff from  
9 seeking that category or type of damages based upon a theory of estoppel or  
10 something similar. You confirmed that you understood.

11 During our call, you confirmed that your client is not seeking any damages that  
12 would be separately available under a breach of the implied covenant claim ("bad  
13 faith") or a Nevada UCPA claim. You confirmed that, instead, the damages sought  
14 under those two claims are only those damages available under both causes of  
15 action. In other words, if there is a category or type of damage that is available to a  
16 prevailing Nevada UCPA plaintiff, but not available to a prevailing "bad faith"  
17 plaintiff (or vice versa), your client is not seeking such damage. Your client is only  
18 seeking the cumulative damages available under both a bad faith and Nevada  
19 UCPA claim.

20 During our call you also confirmed that the \$10,000 in attorneys' fees paid pre-  
21 litigation is the only "out-of-pocket damages" sought by your client. You also  
22 confirmed that, other than punitive damages, ***the \$10,000 in attorneys' fees paid***  
23 ***pre-litigation is the only economic damages sought by your client under any***  
24 ***theory or cause of action*** (whether that's sought as part of the bad faith, Nevada  
25 UCPA and/or Nevada RICO claims).

26 We discussed, at length, whether plaintiff is seeking disgorgement or return of  
profits, or using alleged profits as a measure of damages. You stated that your client  
is not seeking disgorgement or unjust enrichment in any form, and also would not  
use alleged profits or the "float" discussed at length in the complaint as a measure  
of punitive damages.

...

If anything above is inaccurate or if I have omitted anything, please let me know  
immediately.

ECF No. 26 at 4 (emphasis added). Beckstrom does not allege that he responded to this email. In  
his June 10, 2024, supplement to his amended initial disclosures, Beckstrom alleges he suffered  
past attorney's fees of \$10,000 and "Other Attorney's Fees, Pain and Suffering, mental anguish,

1 emotional distress, loss of enjoyment and disruption of life, inconvenience and punitive damages  
2 . . . To be Determined at Trial.” *Id.* at 13.

### 3 II. Legal standard

4 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*,  
5 511 U.S. 375, 377 (1994). When a case is filed in state court between parties who are citizens of  
6 different states, and the amount in controversy is at least \$75,000, the defendant may remove the  
7 case to federal court. 28 U.S.C. §§ 1332, 1441, 1446. But there is a strong presumption against  
8 removal jurisdiction, and “federal jurisdiction must be rejected if there is any doubt as to the  
9 right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The  
10 defendant always has the burden of establishing that removal is proper. *Id.*

### 11 III. Discussion

12 It is undisputed that there is diversity of citizenship between the parties. Thus, the  
13 question is whether the amount in controversy exceeds \$75,000 to enable this court to exercise  
14 diversity jurisdiction over this action.

15 In determining the amount in controversy, courts first look to the complaint. Generally,  
16 “the sum claimed by the plaintiff controls if the claim is apparently made in good faith.” *St. Paul*  
17 *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938) (footnote omitted). The \$75,000  
18 threshold is satisfied if the plaintiff claims a sum greater than the jurisdictional requirement. *See*  
19 *id.* at 288–89; *Pachinger v. MGM Grand Hotel-Las Vegas, Inc.*, 802 F.2d 362, 363 (9th Cir. 1986).  
20 However, like in this case, when removal jurisdiction is challenged by a plaintiff, evidence  
21 establishing the amount in controversy is required. *Dart Cherokee Basin Operating Co., LLC v. Owens*,  
22 574 U.S. 81, 88 (2014). “In such a case, both sides submit proof and the court decides, by a  
23 preponderance of the evidence, whether the amount-in-controversy requirement has been  
24 satisfied.” *Id.* (citing 28 U.S.C. § 1446(c)(2)(B)) (emphasis added). As to the kind of evidence  
25 that may be considered, the Ninth Circuit has adopted the “practice of considering facts  
26 presented in the removal petition as well as any ‘summary-judgment-type evidence relevant to

1 the amount in controversy at the time of removal.” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d  
2 1089, 1090 (9th Cir. 2003) (quoting *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir.  
3 1997)). Conclusory allegations are insufficient. *Id.* at 1090 (citation omitted).

4 In the conclusion of his complaint, Beckstrom prays for: (1) “compensatory damages  
5 which include loss of UIM contract benefit, stress, fear, humiliation, attorney’s fees, out-of-  
6 pocket expenses, and distress in an amount which exceeds \$15,000.00”; (2) “punitive damages to  
7 be determined at trial, but which exceeds \$15,000.00”; and (3) reasonable attorneys’ fees and  
8 costs. ECF No. 1-2 at 24. While this number could potentially surpass \$75,000, depending on  
9 the outcome of trial, it is not clear from the face of the complaint that it will.

10 The documents attached to Beckstrom’s surreply offer additional insight into the  
11 amounts claimed. Following the parties’ meet-and-confer in June 2024, the attorney for the  
12 defendants emailed Beckstrom stating that he “confirmed that, other than punitive damages, the  
13 \$10,000 in attorneys’ fees paid pre-litigation is the only economic damages sought by your client  
14 under any theory or cause of action (whether that’s sought as part of the bad faith, Nevada  
15 UCPA and/or Nevada RICO claims).” ECF No. 26 at 4. He concluded by stating that “[i]f  
16 anything above is inaccurate or if I have omitted anything, please let me know immediately.” *Id.*  
17 There is no evidence in the record that Beckstrom responded to this letter disputing this  
18 summary of their meet and confirm. Beckstrom did, however, file supplements to his amended  
19 disclosures following that email, on June 10, 2024, alleging that his claimed damages are past  
20 attorney’s fees of \$10,000 and “Other Attorney’s Fees, Pain and Suffering, mental anguish,  
21 emotional distress, loss of enjoyment and disruption of life, inconvenience and punitive damages  
22 . . . To be Determined at Trial.” *Id.* at 13. The amount of these “other Attorney’s fees” is unstated  
23 and therefore unclear.

24 It appears Beckstrom is attempting to speak from both sides of his mouth: he seeks to  
25 avoid federal jurisdiction by disclaiming that damages will exceed \$75,000 while refusing to  
26 stipulate so. Worse, he seemingly is purposefully omitting the actual amount he seeks to recover



1 by way of this litigation. The five briefs filed related to this motion to remand make clear that  
2 the parties have been operating on vastly different assumptions as to the total expected damages  
3 in this case. ECF Nos. 12, 14, 18, 24, 26. However, the meet-and-confer that occurred on June 7,  
4 2024, evidently led to a mutual understanding between the parties which the attorney for the  
5 defendants memorialized this in writing and offered Beckstrom and his attorney the  
6 opportunity to correct the statement. *See* ECF No. 26 at 4. No such correction was made. Nor  
7 has the amount in controversy been clarified.

8       Here, the court construes Beckstrom's failure to respond (or to present evidence that he  
9 responded) to defendants' counsel's message as an apparent admission that the only claimed  
10 damages are for punitive damages and the \$10,000 in attorneys' fees paid pre-litigation, a  
11 position that is inconsistent with the later representation that Beckstrom is seeking "Other  
12 Attorney's Fees, Pain and Suffering, mental anguish, emotional distress, loss of enjoyment and  
13 disruption of life, inconvenience and punitive damages . . . To be Determined at Trial." ECF No.  
14 26 at 13. Such gamesmanship is unwelcomed in this court. Counsel is reminded of their  
15 obligations under Federal Rule of Civil Procedure 11. The court could interpret Beckstrom's  
16 refusal to state the amount of damages he is seeking an admission that his damages exceed  
17 \$75,000. *See Ray v. State Farm Lloyds*, 1999 U.S. Dist. Lexis 3103 (N.D. Tex. March 10, 1999)  
18 (discussing that plaintiff's refusal to stipulate that the amount in controversy does not exceed  
19 \$75,000 indicates that the actual amount in controversy exceeds \$75,000.).

20       But, that admission together with the conflicting information regarding what Beckstrom  
21 is actually seeking to recover is insufficient for the court to find defendant has met their burden  
22 of showing by a preponderance of the evidence that the amount in controversy exceeds \$75,000.  
23 *See Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

24       I cannot find that the amount in controversy exceeds \$75,000 and therefore grant  
25 Beckstrom's motion to remand. Although defendants argue that punitive damages could exceed  
26 the jurisdictional threshold, they only cite to one case involving a \$26,394,765.39 punitive



1 damages payout. ECF No. 1 at 4 (citing *Merrick v. Paul Revere Life Ins. Co.*, 594 F. Supp. 2d 1168, 1170  
2 (D. Nev. 2008)). That case, involving a benefits claim in excess of \$1,000,000, is inapposite.  
3 *Merrick*, 594 F. Supp. 2d at 1170. In the notice of removal, defendants state that the punitive  
4 damages claim “likely exceeds \$50,000,” ECF No. 1 at 4, and then in their response to the remand  
5 motion, defendants state that the punitive damages will likely exceed \$100,000, ECF No. 14 at 7.  
6 Even if the punitive damages *do* exceed \$50,000, this, combined with the remaining \$10,000  
7 claimed, do not necessarily exceed the \$75,000 threshold. Where the \$100,000 number came  
8 from (as well as the original \$50,000 number) is unclear and does not appear to be based on  
9 analogous case law. Beckstrom runs the risk of the state court estopping him from now  
10 demanding significant additional damages in his supplemental amended initial disclosures in  
11 light of his refusal to stipulate or clarify here. *See Cicero v. Target Corp.*, 2013 WL 3270559, at \*2 (D.  
12 Nev. June 26, 2013) (“[B]ased on plaintiff’s arguments in her motion to remand that her damages  
13 are limited to \$74,999.99, plaintiff is judicially estopped from arguing for more than \$75,000 in  
14 damages.”) That issue, however, is not for this court to decide. Consequently, Beckstrom’s  
15 motion for remand is granted.

16 **IV. Conclusion**

17 IT IS THEREFORE ORDERED that Beckstrom’s motion to remand [ECF No. 12] is  
18 **GRANTED**.

19 IT IS FURTHER ORDERED that defendants’ motion to dismiss [ECF No. 6] is  
20 **DENIED as moot**.

21 IT IS FURTHER ORDERED that Beckstrom’s motion to amend the complaint [ECF No.  
22 8] is **DENIED as moot**.

23 IT IS FURTHER ORDERED that defendants’ motion for leave to supplement their  
24 response to plaintiff’s motion to remand [ECF No. 24] is **GRANTED**.

1 IT IS FURTHER ORDERED that Beckstrom's "request" for leave to supplement his reply  
2 to plaintiff's motion to remand [ECF No. 26] is GRANTED.

3 The Clerk of Court is kindly instructed to remand this matter, Case No. A-24-886423-C,  
4 to the Eighth Judicial District Court, Department 17, and to close this case.

5 Dated: December 17, 2024

6  
7   
8 Cristina D. Silva  
9 United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26